

APPEAL NO. 021977
FILED SEPTEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 17, 2002. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 19%. The appellant (carrier) appeals, asserting that the correct IR is 7%, as determined by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant replies, urging affirmance.

DECISION

Reversed and rendered.

The claimant sustained a compensable injury on _____. At a CCH held on September 18, 2001, it was determined that the claimant's compensable injury extends to and includes complex regional pain syndrome Type I, also known as reflex sympathetic dystrophy syndrome (RSD). The claimant was first assigned an IR by the carrier-selected required medical examination (RME) doctor, Dr. S. He examined her on April 22, 1999, certified that she had reached maximum medical improvement (MMI) on that date, and assigned an IR of 19%, using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Subsequently, Dr. B was selected as the designated doctor. Dr. B examined the claimant on September 17, 1999, and certified that she reached MMI on April 22, 1999. Dr. B noted that the claimant was independent with bathing, grooming, dressing, hygiene, toileting, and homemaking skills, and that she was able to drive. He referred to nerve conduction studies and an electrodiagnostic work-up done on May 25, 1999, which were reported as within normal limits with no evidence of nerve damage. Dr. B saw evidence of functional overlay and symptom magnification during his examination, full range of motion (ROM) when the claimant was distracted, and no change in skin, hair, or nail patterns, or any side-to-side difference in temperature of the left lower extremity. He found no evidence of atrophy in the lower left extremity, nor any evidence of discoloration. Dr. B noted that there is no specific diagnosis impairment in the AMA Guides for RSD, and looked for nerve disorders. With his findings of functional overlay and no consistent neurological findings, as well as no evidence of motor weakness or true atrophy, Dr. B assigned an IR of 0%.

The claimant's treating doctor, Dr. D, submitted letters challenging the accuracy of the designated doctor's IR, and sent the claimant to Dr. Di for an evaluation. Dr. Di examined the claimant on March 14, 2000, found that she reached MMI on March 14, 2000, and assigned an IR of 30%. Apparently due to the disparity of the ratings, the Commission appointed Dr. Sh to conduct another RME of the claimant and answer specific questions. He examined her on April 2, 2001, and provided his opinion that the claimant has RSD "which started at the left knee and seems to have spread to the rest

of the left leg, the low back, the midback, left arm, and recently also the right arm, and may be responsible for the [claimant's] left-sided headaches.” He stated his opinion that the claimant is permanently impaired by her RSD, and, while he does not perform the specific testing for an IR, he had reviewed the IRs assigned by Drs. S, B, and Di, and believed that the 30% IR assigned by Dr. Di was most appropriate. The claimant was sent back to Dr. B, the designated doctor, who examined her again on February 26, 2002. Dr. B's report contains much of the same history as his earlier report, and incorporates findings from Dr. Di's examination that “the claimant had 5/5 strength and intact light touch sensation in the upper and lower extremities, with ‘no obvious atrophy.’” She was still independent with bathing, grooming, dressing, hygiene, toileting, and homemaking skills, and able to drive. Dr. B noted that observed ROM was greater than the initial measured values, and he observed no lesions, rashes, dystrophic changes, and no side-to-side difference in skin, nail, or hair patterns. He found no vasomotor instability or swelling, but did find symptom magnification throughout the examination. Finding some permanent impairment based on ROM and altered sensation in the left lower extremity, Dr. B assigned an IR of 7%, in accordance with the AMA Guides, and certified the claimant reached “statutory” MMI on April 22, 1999, the same date he had earlier certified as the date of MMI.¹

Section 408.125(e) provides that the report of the designated doctor chosen by the Commission is given presumptive weight and the Commission shall base its determination on that report unless the great weight of the medical evidence is to the contrary. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) and Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, the designated doctor's responses to requests for clarification made by the Commission are also afforded presumptive weight. The hearing officer considered the medical evidence and determined neither of the IRs assigned by the designated doctor was entitled to presumptive weight. The hearing officer erred when he did so. The first IR from the designated doctor was 0% because the designated doctor found no permanent impairment; the second IR of 7% included the designated doctor's assessment of permanent impairment to the left lower extremity for decreased ROM and altered sensation. He found 0% impairment for the lumbar spine, and “no consistent, valid deficits of [ROM], sensation or strength of the upper extremity” to warrant an IR for the left upper extremity. The hearing officer's conclusion that “the [designated doctor] did not understand RSD very well, and not as well as the other doctors who rated Claimant,” is not supported by the evidence and is against the great weight and preponderance of the evidence. Our review of the evidence is that there is a difference of medical opinions between Dr. D, Dr. S, Dr. Di, and Dr. Sh, and the designated doctor, which are matters of medical judgment. Under these circumstances, the designated doctor's opinion prevails. Section 408.125(e).

We reverse the hearing officer's determination that the claimant's IR is 19%, and render a new decision that the claimant's IR is 7% as assigned by the designated doctor in his report of February 26, 2002.

¹ The parties stipulated at the CCH that the claimant reached MMI on September 9, 1999.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge